



Federal Communications Commission  
Washington, D.C. 20554

MAY 28 1998

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JUN - 4 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

John E. Zweig  
Supervisor, Town of Poestenkill  
Poestenkill, New York 12140

Dear Mr. Zweig:

Thank you for your letter dated December 5, 1997, which was forwarded to us from the office of Senator Daniel Patrick Moynihan, concerning the placement and construction of facilities for the provision of personal wireless services and radio and television broadcast services in your community. Your letter refers to three proceedings that are pending before the Commission. In MM Docket No. 97-182, the Commission has sought comment on a Petition for Further Notice of Proposed Rule Making filed by the National Association of Broadcasters and the Association for Maximum Service Television. In this proceeding, the petitioners ask the Commission to adopt a rule limiting the exercise of State and local zoning authority with respect to broadcast transmission facilities in order to facilitate the rapid build-out of digital television facilities, as required by the Commission's rules to fulfill Congress' mandate. In WT Docket No. 97-192, the Commission has sought comment on proposed procedures for reviewing requests for relief from State and local regulations that are alleged to impermissibly regulate the siting of personal wireless service facilities based on the environmental effects of radio frequency emissions, and related matters. Finally, in DA 96-2140 and FCC 97-264, the Commission twice sought comment on a Petition for Declaratory Ruling filed by the Cellular Telecommunications Industry Association seeking relief from certain State and local moratoria that have been imposed on the siting of commercial mobile radio service facilities.

Because all of these proceedings are still pending, we cannot comment on the merits of the issues at this time. However, I can assure you that the Commission is committed to providing a full opportunity for all interested parties to participate. The Commission has formally sought public comment in all three proceedings and, as a result, has received numerous comments from State and local governments, service providers, and the public at large. Your letter, as well as this response, will be placed in the record of all three proceedings and will be given full consideration.

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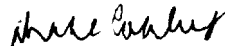
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At the same time, the Commission is actively pursuing initiatives that we hope will render any Commission action limiting State and local authority unnecessary. Commission staff, working with the Commission's Local and State Government Advisory Committee, is bringing together representatives of industry and municipal governments to discuss mutually acceptable solutions to the challenges posed by facilities siting. Chairman Kennard has stated that preemption of local zoning authority should be a remedy of last resort, and that the Commission should not consider preemption until the possibilities for constructive dialogue have been exhausted.

Further information regarding the Commission's policies toward personal wireless service facilities siting, including many of the comments in the two proceedings involving personal wireless service facilities, is available on the Commission's internet site at <http://www.fcc.gov/wtb/siting>.

Thank you for your inquiry.

Sincerely,



for Steven E. Weingarten  
Chief, Commercial Wireless Division  
Wireless Telecommunications Bureau

Copy to: The Honorable Daniel Patrick Moynihan

cc: CWD

Dockets (2)

John Conwell

j:\congress\9800795

DANIEL P. MOYNIHAN  
NEW YORK



1010 M Street N.W.

**United States Senate**  
WASHINGTON, DC 20510-3201

December 30, 1997

WTB  
9/1-10-2  
795

Congressional Liaison  
Federal Communications Commission  
1915 M Street, N.W.  
Washington, D.C. 20554

Dear Sir or Madam:

I am referring the enclosed inquiries from some of my constituents regarding local zoning of cellular, radio and TV towers to your office.

My constituents would appreciate your careful consideration of these remarks, and your thoughts on what remedies there are for this situation. Please respond directly to them and send a copy to me.

I thank you for your attention to this matter.

Sincerely,

Daniel Patrick Moynihan

Enclosures



Town of Clayton  
1000 Islands  
405 Riverside Drive  
Clayton, NY 13624  
Phone - 315-686-3512  
Fax - 315-686-2651

Robert W. Cantwell, Jr., Supervisor  
Bonnie L. Rose, Town Clerk

December 2, 1997

Senator Daniel P. Moynihan  
SR-464 Russell Senate Office Building  
Washington, D.C. 20510-3201

Dear Senator Moynihan:

We are writing you about the Federal Communications Commission and its attempts to preempt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Both Congress and the courts have long recognized that zoning is a peculiarly local function. Please immediately contact the FCC and tell it to stop these efforts which violate the intent of Congress, the Constitution and the principles of Federalism.

In the 1996 Telecommunications Act, Congress expressly reaffirmed local zoning authority over cellular towers. It told the FCC to stop all rulemakings where the FCC was attempting to become a Federal Zoning Commission for such towers. Despite this instruction from Congress, the FCC is now attempting to preempt local zoning authority in three different rulemakings.

Cellular Towers - Radiation: Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC.

~~municipal Cellular Towers - Moratoria:~~ Moratoria: Relatedly, the FCC is proposing a rule banning the moratoria that some municipalities impose on cellular towers while they revise their zoning ordinances to accommodate the increase in the numbers of these towers. Again, this violates the Constitution and the directive from Congress.

Radio/TV Towers: The FCC's proposed rule on radio and TV towers is as bad: It sets an artificial limit of 21 to 45 days for municipalities to act on any local permit (environmental, building permit, zoning or other). Any permit request is automatically deemed granted if the municipality doesn't act in this time frame, even if the application is incomplete or clearly violates local law. The FCC's proposed rule would also prevent municipalities from considering the impacts such towers have on property values, the environment or aesthetics. Even safety

Town Council: Vivian F. Black Justin A. Taylor George E. Kittle Donald I. Turcotte

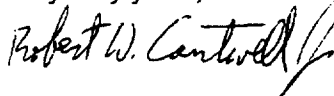
requirements could be overridden by the FCC! Also, all appeals of zoning and permit denials would go to the FCC, not to the local zoning authority in cases where the local authority is the one that made the decision.

These actions violate the intent of Congress, the Constitution and the principles of Federalism. This is particularly true given that the FCC is a single purpose agency, with no zoning expertise.

Please do three things to stop the FCC: First write new FCC Chairman William Kennard and FCC Commissioners Susan Ness, Harold Furchtgott-Roth, Michael Powell and Gloria Tridandopoulos. Stop this intrusion on local zoning authority. See FCC Docket 97-182 and DA 96-2140; second, join in the "Dear Colleague Letter" currently being prepared to go to the FCC from many members of Congress; and third, oppose any effort by congress to grant the FCC the power to act as a "Federal Zoning Commission" and preempt local zoning authority.

The following people at national municipal organizations are familiar with the FCC's proposed rules and municipalities' objections to them: Barrie Tabin at the National League of Cities, 202-626-5194; Eileen Huggard at the National Association of Telecommunications Officers and Advisors, 703-506-3275; Robert Fogel at the National Association of Counties, 202-393-6226; Kevin McCarty at the U.S. Conference of Mayors, 202-293-7330; and Cheryl Maynard at the American Planning Association, 202-872-0611. Feel free to call them if you have any questions.

Very truly yours,



Robert W. Cantwell Jr.  
Supervisor

cc:[see attached list]

# Copy List

Senator John McCain  
241 SROB  
Washington, DC 20510-0303

Senator Conrad Burns  
187 SDOB  
Washington, DC 20510-2603

Senator Kay Bailey Hutchison  
283 SROB  
Washington, DC 20510-4304

Senator Slade Gorton  
730 SHOB  
Washington, DC 20510-4701

Senator Dianne Feinstein  
331 SHOB  
Washington, DC 20510-0504

Representative Tom Bliley  
2409 RHOB  
Washington, DC 20515-4607

Representative W. J. Tauzin  
2183 RHOB  
Washington, DC 20515-1803

Representative Edward J. Markey  
2133 RHOB  
Washington, DC 20515-2107

Representative John D. Dingell  
2328 RHOB  
Washington, DC 20515-2216

Representative Bob Goodlatte  
123 CHOB  
Washington, DC 20515-4606

Representative James Moran  
1214 LHOB  
Washington, DC 20515-4608

Representative Bart Stupak  
1410 LHOB  
Washington, DC 20515-2201

Representative Joe Barton  
2264 RHOB  
Washington, DC 20515-4306

Ms. Barrie Tabin  
Legislative Counsel  
National League of Cities  
1301 Pennsylvania Ave, NW, 6th Floor  
Washington, DC 20004

Ms. Eileen Huggard  
Executive Director  
NATO  
1650 Tysons Boulevard, Suite 200  
McLean, VA 22102-3915

Mr. Robert Fogel  
Associate Legislative Director  
National Association of Counties  
440 First Street, NW, 8th Floor  
Washington, DC 20001

Mr. Kevin McCarty  
Assistant Executive Director  
U.S. Conference of Mayors  
1620 Eye Street, 4th Floor  
Washington, DC 20006

Ms. Cheryl Maynard  
Government Affairs Coordinator  
American Planning Association  
1776 Massachusetts Ave. NW, 4th Floor  
Washington, DC 20036



## TARRYTOWN-ON-HUDSON

21 Wilday Street • Tarrytown, New York 10591-3199

*Mayor*

EILEEN PILLA

*Deputy Mayor*

THOMAS T. BASHER

*Trustees*

LOUIS AGRO, JR.

PAUL J. IANOS, JR.

RAYMOND E. MCGOVERN, JR.

DOMENIC J. MORABITO

DONALD H. WHITELY

*Village Administrator*

CYNTHIA A. RUBINO

914-631-1885

*Village Treasurer*

GERALD J. BARBELET

914-631-7873

*Village Clerk*

LOUISE CAMILLIERE

914-631-1652

*Building Inspector*

RICHARD STEIN

914-631-3668

*Chief of Public Works*

BENEDICT SALANITRO, P.E.

914-631-0356

Fax No.: 914-631-8770

December 9, 1997

Senator Daniel P. Moynihan  
United States Senate  
464 Russell Senate Office Building  
1<sup>st</sup> and C Streets, N.E.  
Washington, D. C. 20510

Dear Senator Moynihan:

We are writing you about the Federal Communications Commission and its attempts to pre-empt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Both Congress and the courts have long recognized that zoning is a peculiarly local function. Please immediately contact the FCC and tell it to stop these efforts which violate the intent of Congress, the Constitution and principles of Federalism.

In the 1996 Telecommunications Act, Congress expressly reaffirmed local zoning authority over cellular towers. It is not the FCC's responsibility to make what the FCC was attempting to become a Federal zoning Commission for such towers. Despite this instruction from Congress, the FCC is now attempting to pre-empt local zoning authority in three different rulemakings.

Cellular Towers - Radiation: Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC. The FCC is attempting to have the "exception swallow the rule" by using the limited authority Congress gave it over cellular tower radiation to review and reverse any cellular zoning decision in the U.S. which it finds is "tainted" by radiation concerns, even if the decision is otherwise perfectly permissible. In fact, the FCC is saying that it



Page Two

December 9, 1997

can "second guess" what the true reasons for a municipality's decision are, need not be bound by the stated reasons given by a municipality and doesn't even need to wait until a local planning decision is final before the FCC acts.

Some of our citizens are concerned about the radiation from cellular towers. We cannot prevent them from mentioning their concerns in a public hearing. In its rulemaking the FCC is saying that if any citizen raises this issue that this is sufficient basis for a cellular zoning decision to immediately be taken over the FCC and potentially reversed even if the municipality expressly says it is not considering such statements and the decision is completely valid on other grounds, such as the impact of the tower on property values or aesthetics.

Cellular Towers - Moratoria: Relatedly the FCC is proposing a rule banning the moratoria that some municipalities impose on cellular towers while they revise their zoning ordinances to accommodate the increase in the numbers of these towers. Again, this violates the Constitution and the directive from Congress preventing the FCC from becoming a Federal Zoning Commission.

Radio/TV Towers: The FCC's proposed rule on radio and TV towers is as bad: It sets an artificial limit of 21 to 45 days for municipalities to act on any local permit (environmental, building permit, zoning or other.) Any permit request is automatically deemed granted if the municipality doesn't act in this timeframe, even if the application is incomplete or clearly violates local law. And the FCC's proposed rule would prevent municipalities from considering the impacts such towers have on property values, the environment or aesthetics. Even safety requirements could be overridden by the FCC! And all appeals of zoning and permit denials would go to the FCC, not to the local courts.

This proposal is astounding when broadcast towers are some of the tallest structures known to man - over 2,000 feet tall, taller than the Empire State Building. The FCC claims these changes are needed to allow TV stations to switch to High Definition Television quickly. But The Wall Street Journal and trade magazines state there is no way the FCC and broadcasters will meet the current schedule anyway, so there is no need to violate the rights of municipalities and their residents just to meet an artificial deadline.

These actions represent a power grab by the FCC to become the Federal Zoning Commission for cellular towers and broadcast towers. They violate the intent of Congress, the Constitution and principles of Federalism. This is particularly true given that the FCC is a single purpose agency with no zoning expertise, that never saw a tower it didn't like.

Please do three things to stop the FCC: First, write new FCC Chairman William Kennard and FCC Commissioners Susan Ness, Harold Furchtgott-Roth, Michael Power and Gloria Tristani telling them to stop this intrusion on local zoning authority in cases WT 97-197,

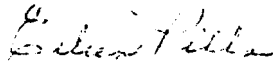
Page Three

December 9, 1997

MM Docket 97-182 and DA 96-2140; second, join in the "Dear Colleague Letter" currently being prepared to go to the FCC from many members of Congress; and third, oppose any effort by Congress to grant the FCC the power to act as a "Federal Zoning Commission" and pre-empt local zoning authority.

The following people at national municipal organizations are familiar with the FCC's proposed rules and municipalities' objections to them: Barrie Tabin at the National League of Cities, 202-626-3194; Eileen Huggard at the National Association of Telecommunications Officers and Advisors, 703-506-3275; Robert Fogel at the National Association of Counties, 202-393-6226; Kevin McCarty at the U.S. Conference of Mayors, 202-293-7330; and Cheryl Maynard at the American Planning Association, 202-872-0611. Feel free to call them if you have questions.

Very truly yours,



Eileen Pilla  
Mayor

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Washington, DC 20510-0303

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Washington, DC 20510-2603

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Senator Dianne Feinstein  
331 SHOB  
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Representative Tom Bliley  
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Washington, DC 20515-4607

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2183 RHOB  
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Representative Edward J. Markey  
2133 RHOB  
Washington, DC 20515-2107

Representative John D. Dingell  
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Washington, DC 20006

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Government Affairs Coordinator  
American Planning Association  
1776 Massachusetts Ave. NW, 4th Floor  
Washington, DC 20036



# Town of Newstead

Church & John St.  
Akron, N.Y. 14001

P.O. Box 227  
Phone (716) 542-4573

FAX PHONE (716) 542-3702

December 9, 1997

SUPERVISOR  
DONALD C. HOLMES

COUNCILMEN  
GERALD F. SUMME  
THOMAS L. COWAN  
THOMAS R. GEORGE  
DAVID L. CUMMINGS

TOWN CLERK - REGISTRAR  
TAX COLLECTOR  
CAROLE D. BORCHERT

DEPUTY TOWN CLERK  
MARY JANE VAUGHN

HIGHWAY SUPERINTENDENT  
CARY L. SOCAI

CODE ENFORCEMENT OFFICER  
DONNAL D. FOLGER

ATTORNEY FOR THE TOWN  
NATHAN S. NEILL

ASSESSOR  
FREDERICK J. PASK, JR.

Hon. Daniel Patrick Moynihan  
United States Senate  
464 Russell Senate Office Bldg.  
Washington, D.C. 20510

Dear Senator Moynihan:

I am writing to you to express the concern of the Town Board over attempts by the FCC to set itself up as the de facto Appeals Board with respect to town decisions in cellular and broadcast tower cases. For many years both the courts and the United States Congress have recognized zoning as a local function. We believe very strongly that it should remain a local function.

The 1996 Telecommunications Act reaffirmed some local zoning authority with respect to cellular towers. It now appears that the FCC is attempting to set itself up as Judge and Jury for the review of all matters related to cellular and broadcast towers. They want to be the ones to have final say as to whether a decision is "tainted".

Suppose, for example, that we have a public hearing of public comment at a board meeting by some resident who has radiation concerns. We understand that we can not base our decision upon those concerns. We also understand that we can't stop people from saying what is on their mind and the fact is many citizens still feel this is a problem. We are not going to hold a hearing and tell people they can only speak if they don't say anything to offend the FCC. We don't want the FCC then saying "Well your decision must be tainted because of what citizens said"

12-9-97

We urge you to contact FCC Commissioners to make clear to them that Congress did not grant them this authority. Specifically tell them to stop this intrusion on local zoning in cases WT 97-197, MM Docket 97-182 and DA 96-2140. We also urge that you speak with your colleagues and take whatever steps are necessary to assure that the FCC never has the power to override or preempt local zoning authority.

Ronald Colman

DCH:cdb



## TOWN OF POESTENKILL

POESTENKILL, NEW YORK 12140

PHONE  
(518) 283-5100

December 5, 1997

in the direction of the Poestenkill Town Board about the Federal Communications  
Senator Daniel Moynihan  
U. S. Senate  
405 Lexington Avenue, 62nd Floor  
New York, NY 10174

Dear Senator Moynihan:

I am writing you at the direction of the Poestenkill Town Board about the Federal Communications Commission and its attempts to preempt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Both Congress and the courts have long recognized that zoning is a peculiarly local function. Please immediately contact the FCC and tell it to stop these efforts which violate the intent of Congress, the Constitution and principles of Federalism.

In the 1996 Telecommunications Act, Congress expressly reaffirmed local zoning authority over cellular towers. It told the FCC to stop all rulemakings where the FCC was attempting to become a Federal Zoning Commission for such towers. Despite this instruction from Congress, the FCC is now attempting to preempt local zoning authority in three different rulemakings.

Cellular Towers - Radiation: Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC. The FCC is attempting to have the "exception swallow the rule" by using the limited authority Congress gave it over cellular tower radiation to review and reverse any cellular zoning decision in the U.S. which it finds is "tainted" by radiation concerns, even if the decision is otherwise perfectly permissible. In fact, the FCC is saying that it can "second guess" what the true reasons for a municipality's decision are, need not be bound by the stated reasons given by a municipality and doesn't even need to wait until a local planning decision is final before the FCC acts.

Some of our citizens are concerned about the radiation from cellular towers. We cannot prevent them from mentioning their concerns in a public hearing. In its rulemaking the FCC is saying that if any citizen raises this issue that this is sufficient basis for a cellular zoning decision to immediately be taken over by the FCC and potentially reversed, even if the municipality expressly says it is not considering such statements and the decision is completely valid on other grounds, such as the impact of the tower on property values or aesthetics. This presumption on the part of the FCC, of general dishonesty and lack of integrity of local governments is unjust, untrue, and intolerable.

Page Two  
December 5, 1997

Cellular Towers - Moratoria: Relatedly the FCC is proposing a rule banning the moratoria that some municipalities impose on cellular towers while they revise their zoning ordinances to accommodate the increase in the numbers of these towers. Again, this violates the Constitution and the directive from Congress preventing the FCC from becoming a Federal Zoning Commission.

RADIO/TV Towers: The FCC's proposed rule on radio and TV towers is as bad: It sets an artificial limit of 21 to 45 days for municipalities to act on any local permit (environmental, building permit, zoning or other). Any permit request is automatically deemed granted if the municipality doesn't act in this time frame, even if the application is incomplete or clearly violates local law. And the FCC's proposed rule would prevent municipalities from considering the impacts such towers have on property values, the environment or aesthetics. Even safety requirements could be overridden by the FCC! And all appeals of zoning and permit denials would go to the FCC, not to the local courts. If such a short time limit were in fact necessary, it would imply exceedingly poor and haphazard planning on the parts of both the applicant and the FCC.

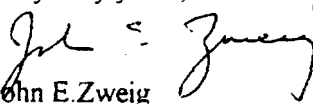
This proposal is astounding when broadcast towers are some of the tallest structures known to man -- over 2,000 feet tall, taller than the Empire State Building. The FCC claims these changes are needed to allow TV stations to switch to High Definition Television quickly. But *The Wall Street Journal* and trade magazines state there is no way the FCC and broadcasters will meet the current schedule anyway, so there is no need to violate the rights of municipalities and their residents just to meet an artificial deadline.

These actions represent a power grab by the FCC to become the Federal Zoning Commission for cellular towers and broadcast towers. They violate the intent of Congress, the Constitution and principles of Federalism. This is particularly true given that the FCC is a single purpose agency, with no zoning expertise, that never saw a tower it didn't like.

Please do three things to stop the FCC: First, write new FCC Chairman William Kennard and FCC Commissioners Susan Ness, Harold Furchtgott-Roth, Michael Powell and Gloria Tristani telling them to stop this intrusion on local zoning authority in cases WT97-197, MM Docket 97-182 and DA 96-2140; second, join in the "Dear Colleague Letter" currently being prepared to go to the FCC from many members of Congress; and third, oppose any effort by the Congress to grant the FCC the power to act as a "Federal Zoning Commission" and preempt local zoning authority.

The following people at national municipal organizations are familiar with the FCC's proposed rules and municipalities' objections to them: Barrie Tabin at the National League of Cities, 202-626-3194; Eileen Huggard at the National Association of Telecommunications Officers and Advisors, 703-506-3275; Robert Fogel at the National Association of Counties, 202-393-6226; Kevin McCarty at the U.S. Conference of Mayors, 202-293-7330; and Cheryl Maynard at the American Planning Association, 202-872-0611. Feel free to call them if you have any questions, or contact us if we can in any way be of assistance in this effort.

Very truly yours,

  
John E. Zweig  
Supervisor

# Village of Kings Point

32 STEPPINGSTONE LANE, KINGS POINT, N.Y. 11024 • Village Hall: (516) 482-7872 • Police Department: (516) 482-1000 • Fax #: (516) 482-9061



MAYOR: Michael C. Kalnick

December 3, 1997

Senator Daniel Patrick Moynihan  
405 Lexington Avenue, 62nd Floor  
New York NY 10174

Dear Senator Moynihan:

We are writing you about the Federal Communications Commission and its attempts to preempt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Both Congress and the courts have long recognized that zoning is a peculiarly local function. Please immediately contact the FCC and tell it to stop these efforts which violate the intent of Congress, the Constitution and principles of Federalism.

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Cellular Towers - Radiation: Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act with the sole exception that municipalities cannot regulate the radiation from cellular towers if it is within limits set by the FCC. The FCC is attempting to have the "exception swallow the rule" by using the limited authority Congress gave it over cellular tower radiation to review and reverse any cellular zoning decision in the U.S. which it finds is "tainted" by radiation concerns, even if the decision is otherwise perfectly permissible. In fact, the FCC is saying that it can "second guess" what the true reasons for a municipality's decision are, need not be bound by the stated reasons given by a municipality and doesn't even need to wait until a local planning decision is final before the FCC acts.

Some of our citizens are concerned about the radiation from cellular towers. We cannot prevent them from mentioning their



Senator Daniel Patrick Moynihan  
December 3, 1993, considering such bills  
Page 2

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These actions represent an unjustified attempt by the FCC to become the Federal Zoning Commission for cellular towers and broadcast towers. They violate the intent of Congress, the Constitution and principles of Federalism. This is particularly true given that the FCC is a single-purpose agency with no zoning expertise that never saw a tower it didn't like.

1987  
Senator Daniel Patrick Moynihan

December 3, 1987

Page 3

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Very truly yours,

VILLAGE OF KINGS POINT

*Michael C. Kalnick*

Michael C. Kalnick  
Mayor

MCK:fav

cc: (see attached list)